

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOMANI PHAKAMILE-EL,

Plaintiff,

v.

ERIC SABREE,
Wayne County Treasurer,

Defendant.

Case No. 17-12884
Honorable Laurie J. Michelson

**OPINION AND ORDER GRANTING PLAINTIFF'S APPLICATION TO
PROCEED IN FORMA PAUPERIS AND DISMISSING THE COMPLAINT**

Plaintiff Bomani Phakamile-El filed this lawsuit challenging the tax foreclosure of his property. (R. 1.) Before the Court is Plaintiff's application to proceed *in forma pauperis*. (R. 2.)

Under 28 U.S.C. § 1915(a)(1), the Court may waive a person's filing fees if he shows that he is "unable to pay such fees." In his affidavit, the Plaintiff avers that he earns \$500.00 every two weeks. (R. 2.) The Court therefore finds that the Plaintiff is unable to pay the required filing fee.

In cases where a plaintiff has been permitted to proceed *in forma pauperis*, the Court must screen the Complaint. In particular, "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . (B) the action or appeal—(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). Although a pro se litigant is entitled to a liberal construction of his pleadings and filings, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct.

1955, 167 L.Ed.2d 929 (2007)). Dismissal of the case is appropriate where “the claim is based on an indisputably meritless legal theory[.]” *Wilson v. Yaklich*, 148 F.3d 596, 600 (6th Cir.1998). Moreover, an IFP complaint “is frivolous where it lacks an arguable basis either in law or in fact.” *Nietzke v. Williams*, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989). Factual frivolousness includes allegations that are “clearly baseless,” “fantastic,” or “delusional.” *Id.* at 327–28.

The Court cannot discern any relationship between the three state causes of action specifically identified in Plaintiff’s complaint -- fraud, trespass and trespass on the case -- and the allegations he makes within those claims, which all appear to be based on federal statute or the Constitution. For example, under his trespass claim, he asserts the County violated his *Miranda* rights. (R. 1, PID 6.) To the extent Plaintiff is seeking to assert federal constitutional claims arising out of some foreclosure of his property by the Wayne County Treasurer’s Office, he has failed to allege any discernable facts to support such claims. The Court notes that Plaintiff filed another lawsuit involving the same property at issue here. That case was summarily dismissed as follows:

Here, plaintiff’s complaint—entitled “Writ of Stay and Abate”—has no basis in law or fact. It is a convoluted jumble of legal jargon and citations to state and federal constitutions and the Uniform Commercial Code. Plaintiff’s only assertion resembling an argument is that he should not have to pay taxes or suffer the consequences of not paying because he “did not consent [or] agree” to pay taxes. *Id.* ¶ 14.

No one likes taxes. But unfortunately for plaintiff, the Taxman does not need to secure our permission or consent before collecting property taxes. Because this complaint has no basis in law, it is frivolous.

The complaint here is similarly defective and dismissal is warranted pursuant to §1915(e)(2)(B).

Accordingly, for the reasons stated, Plaintiff's complaint is hereby dismissed.

SO ORDERED.

Dated: October 26, 2017

s/Laurie J. Michelson
LAURIE J. MICHELSON
U.S. DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on October 26, 2017.

s/Keisha Jackson
Case Manager